

ADMINISTRATIVE PROCEEDING

BEFORE THE

SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:

Live Oak Capital Group, LLC,

Kenneth F. Brennan, and

Gregory W. Sams,

Respondents.

File Number 07021

ORDER TO CEASE AND DESIST

WHEREAS, the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. § 35-1-101 to 35-1-703 (Supp. 2005), governs all actions or proceedings initiated based on conduct occurring on or after January 1, 2006.

WHEREAS, the Act became effective on January 1, 2006.

WHEREAS, the Uniform Securities Act (the "Prior Act"), S.C. Code Ann. § 35-1-10 to 35-1-1500, governs all actions or proceedings initiated based on conduct occurring before January 1, 2006.

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division"), pursuant to authority granted in the Act, S.C. Code Ann. §§ 35-1-101 to 35-1-703 (Supp. 2005), on February 20, 2007, conducted an audit of the investment advisory activities of Live Oak Capital Group, LLC ("LOCG"), at LOCG's home office in Bluffton, South Carolina.

WHEREAS, during the audit, the Division discovered potential violations of the Act by Respondents.

WHEREAS, the potential violations of the Act led the Division to open and conduct an investigation of Respondent pursuant to S.C. Code Ann. § 35-1-602 of the Act.

WHEREAS, LOCG, Kenneth F. Brennan ("Brennan"), and Gregory W. Sams ("Sams") (collectively "Respondents") have applied to be registered as an investment adviser ("IA") or an investment adviser representative ("IAR") for 2007.

WHEREAS, the potential violations of the Act were not resolved by the Division's investigation and review of the Respondents' applications for registration.

NOW THEREFORE, in connection with the audit, investigation, and review of Respondents' applications for registration, the Division determined that the Respondents have engaged, are engaging, or are about to engage in acts or practices constituting violations of the Act and hereby includes in this Order to Cease and Desist a statement of the civil penalty and costs of the investigation sought, a statement of the reasons for the Order, and a notice that a hearing will be scheduled if Respondents request a hearing.

FACTUAL HISTORY

1. From November 13, 2002, to the present, Brennan and Sams have been managing members of LOCG, and are persons occupying a similar status or performing similar functions for an IA as a partner, officer, or director of an IA.
2. From November 13, 2002, through December 31, 2005, Brennan and Sams were automatically registered in South Carolina as IARs for LOCG pursuant to S.C. Code Ann. § 35-1-470 of the Prior Act.
3. The Act, which became effective on January 1, 2006, does not contain a provision automatically registering partners, officers, directors, or persons occupying a similar status or performing similar functions for a registered IA.
4. Effective January 1, 2006, the Act requires that Brennan and Sams annually apply for registration as an IAR in South Carolina pursuant to S.C. Code Ann. § 35-1-406(a);
5. On December 31, 2005, Brennan's and Sams' registrations as IARs in South Carolina expired.

6. For 2006, Brennan and Sams did not submit to the Division applications for registration as IARs.
7. LOCG was registered as an IA in South Carolina from November 13, 2002 through December 31, 2006;
8. On November 13, 2002, the Division registered LOCG as an IA in South Carolina for a two-year period expiring on November 12, 2004.
9. On or about November 16, 2004, LOCG paid \$210 as part of an application for registration as an IA in South Carolina.
10. On or about February 2, 2005, the Division registered Frank J. Parry ("Parry"), who is not a partner, officer, director, or a person holding a similar status or performing similar functions within LOCG, as an IAR associated with LOCG, and LOCG paid \$55 as part of Parry's 2005 application for registration as an IAR in South Carolina.
11. On or about November 21, 2005, LOCG paid \$210 as part of LOCG's 2006 application for registration as an IA in South Carolina and \$55 as part of Parry's 2006 application for registration as an IAR in South Carolina.
12. LOCG, Brennan, or Sams performed the following investment advisory activities in 2006 or made the following representations about their investment advisory activities in 2006:
 - a. In 2006, Brennan, Sams, and/or LOCG made numerous trades in clients' investment advisory accounts.
 - b. In 2006, LOCG earned \$142,788.25 in investment advisory fees from its clients and approximately \$107,000 was distributed to Brennan and Sams.
 - c. Brennan sent a request dated December 31, 2006, to Schwab Institutional authorizing Schwab to transfer \$33,702 to LOCG from thirty-three (33) client accounts for investment advisory fees for the fourth quarter of 2006.

- d. In 2006, per information provided by LOCG on the “LOCG Client Portfolio Roster 3/31/07.” LOCG, Brennan, and/or Sams opened six (6) new investment advisory accounts.
 - e. LOCG advertised presentations to prospective clients. These presentations were scheduled to be held on June 22, 2006, and October 18, 2006, in Bluffton, South Carolina. The advertisements stated that Brennan, Sams, and Parry were “Starring,” used the phrase “Registered Investment Advisor,” and gave investment returns for LOCG’s Private Client Group portfolio, the Standard & Poors 500 index, the Dow Jones Average, and the NASDAQ.
- 13. On December 31, 2006, LOCG’s registration as an IA in South Carolina expired.
- 14. On February 20, 2007, the Division’s audit staff performed an audit of the investment advisory activities of LOCG pursuant to S.C. Code Ann. § 35-1-411(d).
- 15. Brennan wrote that during this audit, the Division’s audit staff informed Respondents “of an expired registration with the State of South Carolina.”
- 16. On February 21, 2007, the Division’s registration staff sent a letter to LOCG reminding it that the Division had not received a complete application for registration for 2007 and stating that LOCG still needed to submit Part II of Form ADV, LOCG’s financial statement, and a sample investment advisory contract.
- 17. In its efforts to file a complete 2007 application for registration:
 - a. On or before December 31, 2006, LOCG paid its \$210 annual registration fee to the State of South Carolina to be an IA. At the same time, LOCG paid \$55 as part of Parry’s 2007 application for registration to be an IAR.
 - b. On February 20, 2007, as part of the Division’s audit of LOCG, LOCG provided a copy of its Balance Sheet as of December 31, 2006, and its Profit and Loss statement for the year ended December 31, 2006. The Division used these

financial statements to satisfy the Division's request on February 21, 2007, to submit a financial statement.

- c. On February 22, 2007, LOCG filed on the Investment Adviser Registration Depository ("IARD") system an amended Form ADV, Parts 1A and 1B.
- d. On March 13, 2007, as part of the Division's audit of LOCG, LOCG filed with the Division a copy of six (6) investment advisory contracts.

18. LOCG, Brennan, or Sams performed the following investment advisory activities in 2007 or made the following representations about its investment advisory activities in 2007:

- a. Per the "LOCG Client Portfolio Roster 3/31/07," LOCG opened a new investment advisory account on January 8, 2007 and another on February 28, 2007.
- b. On January 3, 2007, LOCG sold shares of a security for one (1) client.
- c. On January 25, 2007, LOCG purchased shares of a security for two (2) clients.
- d. LOCG advertised a presentation to prospective clients. This presentation was scheduled to be held on February 15, 2007, in Bluffton, South Carolina. The advertisement stated that Brennan, Sams, and Parry were "Starring," used the phrase "Registered Investment Advisor," and gave investment returns for LOCG's Private Client Group portfolio, the Standard & Poors 500 index, the Dow Jones Average, and the NASDAQ.
- e. Brennan stated that LOCG held "our February, 2007 program."
- f. On every one of the PowerPoint slides for the February 15, 2007, presentation in Bluffton, South Carolina, to prospective clients, LOCG stated that it was a "Registered Investment Advisor."
- g. LOCG advertised in a church bulletin on February 18, 2007, using the phrase "Registered Investment Advisors."

- h. LOCG stated on Part 1A of its Form ADV filed on February 22, 2007, that it supervised or managed 113 accounts and had assets under management of \$21,000,000.
 - i. Brennan stated that on April 4, 2007, LOCG purchased three (3) new positions in securities for its clients.
- 19. On April 4, 2007, the Division sent a letter to Respondents confirming that Respondents were not registered as an IA or IARs in South Carolina and informing Respondents that they should immediately cease and desist from transacting business in South Carolina as an IA or IARs.
- 20. On April 4, 2007, Brennan responded by confirming that on February 20, 2007, the Division's audit staff notified Respondents of an expired registration with the State of South Carolina and by stating that LOCG had provided information to the Division about block trades it made for LOCG's investment advisory clients.
- 21. On April 5, 2007, the Division spoke via telephone with Brennan about the pending applications for registration, including an incomplete 2007 application for registration for LOCG, prior periods in which Brennan and Sams may not have been registered as IARs in South Carolina, and the possibility that Sams may have provided investment advisory services in South Carolina while not registered.
- 22. During this telephone conversation, the Division requested that LOCG file a current Part II of Form ADV and a copy of LOCG's surety bond.
- 23. On April 6, 2007, the Division received from LOCG Part II of Form ADV dated February 22, 2007.
- 24. Regarding the involvement of Brennan and Sams in the investment advisory activities of LOCG:

- a. Brennan and Sams received approximately \$107,000 in distributions from LOCG in 2006.
- b. In 2006 and 2007, Brennan and Sams gave presentations to attract new clients to LOCG.
- c. In the Part II of Form ADV dated February 22, 2007, LOCG stated that Brennan and Sams are members of LOCG and have been registered investment advisers from October 2002 to the present.
- d. LOCG stated that Brennan's principal business is to provide investment advice and investment management.
- e. Sams stated that his responsibilities at LOCG are limited primarily to administrative matters, including handling registration issues, and providing services to clients that he would otherwise be authorized to do as a Certified Public Accountant.
- f. To obtain new clients, Brennan stated, "We do two or three programs a year in the Bluffton area."

25. After reviewing LOCG's partial application for registration and other information, the Division sent a letter on April 13, 2007, to Respondents acknowledging receipt of a current version of Part II of Form ADV and asking for various documentation and explanations about LOCG's application for registration.
26. On April 23, 2007, the Division received a copy of LOCG's surety bond in the amount of \$35,000 with Selective Insurance Company of America, which became effective on or about March 16, 2007. This filing completed LOCG's 2007 application for registration as an IA.
27. On May 3, 2007, the Division received a letter from Sams addressing some of the issues included in the Division's April 13, 2007, letter. Included with Sams' letter was a revised Part II of Form ADV dated April 30, 2007, and documentation that LOCG paid only \$265 for

2005 for registration in South Carolina and only \$265 for 2006 registration in South Carolina.

28. On May 18, 2007, the Division had a telephone conversation with Brennan concerning the open issues regarding Respondents' applications for registration.
29. After that telephone conversation, the Division sent a letter on May 18, 2007, to Respondents to follow-up on that conversation and LOCG's responses to the Division's earlier requests.
30. On May 21, 2007, in response to an issue raised by the Division, LOCG filed an amended Part 1A of Form ADV on the IARD system.
31. On May 22, 2007, the Division received from Sams a letter and supporting documentation, including a revised Part II of Form ADV dated May 21, 2007, in response to the Division's earlier requests.

APPLICABLE LAW

32. Pursuant to S.C. Code Ann. § 35-1-102(15) of the Act, an investment adviser is a person that, for compensation, engages in the business of advising others as to the value of securities or the advisability of investing in, purchasing, or selling securities, or that, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.
33. Pursuant to S.C. Code Ann. § 35-1-102(16) of the Act, an investment adviser representative is an individual employed or associated with an investment adviser and who makes recommendations or otherwise gives investment advice regarding securities, manages securities accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice regarding securities, holds himself out as providing investment advice regarding securities, or performs certain other investment-related activities.

34. During the course of LOCG's registration as an IA in South Carolina, three provisions have at different times determined the length of that registration as follows:
- a. When LOCG first registered as an IA in South Carolina in 2002, pursuant to S.C. Code Ann. § 35-1-430 (Supp. 2002) of the Prior Act, every IA registration expired two years from its effective date unless renewed.
 - b. When LOCG renewed its registration as an IA in 2004, pursuant to S.C. Code Ann. § 35-1-430 (Supp. 2003) of the Prior Act, every IA registration expired at midnight on the last day of the calendar year in which it became effective unless renewed. This provision became effective on June 4, 2003.
 - c. Since January 1, 2006, pursuant to S.C. Code Ann. § 35-1-406(d) (Supp. 2005) of the Act, every IA registration is effective until midnight on December 31 of the year for which the application for registration is filed.
35. Pursuant to S.C. Code Ann. § 35-1-470 of the Prior Act, registration of an IA automatically constitutes registration of any IAR who is a partner, officer, or director, or a person occupying a similar status or performing similar functions.
36. Pursuant to S.C. Code Ann. § 35-1-406(a) of the Act, a person shall register as an IA or an IAR by filing an application and a consent to service of process complying with Section 35-1-611, passing one or more examinations as required by the Securities Commissioner, paying the fee specified pursuant to Section 35-1-410, and paying any reasonable fees charged by the designee of the Securities Commissioner for processing the filing. The application must contain:
- a. The information or record required for the filing of a uniform application; and
 - b. Upon request by the Securities Commissioner, any other financial or other information or record that the Securities Commissioner determines is appropriate.

37. Pursuant to S.C. Code Ann. § 35-1-404(a) of the Act, it is unlawful for an individual to transact business in South Carolina as an IAR unless the individual is registered under the Act as an IAR or is exempt from registration as an IAR under Section 35-1-404(b).
38. Pursuant to S.C. Code of Regulations 13-403(d) of the Act, it is unlawful for an IA to employ or associate with an individual required to be registered under the Act as an IAR who transacts business in South Carolina on behalf of the IA unless the individual is registered under Section 35-1-404(a) or is exempt from registration under Section 35-1-404(b).
39. Pursuant to S.C. Code of Regulations 13-403(a) of the Act, it is unlawful for a person to transact business in South Carolina as an IA unless the person is registered under the Act as an IA or is exempt from registration as an IA under Section 35-1-403(b).
40. Pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act, if the Securities Commissioner, determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this Act or a rule adopted or order issued under this Act, the Securities Commissioner may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the Act.
41. Pursuant to S.C. Code Ann. § 35-1-604(b) of the Act, an order issued under Section 35-1-604(a) is effective on the date of issuance and must include a statement of any civil penalty or costs of investigation the Securities Commissioner will seek, a statement of the reasons for the order, and notice about a hearing.

DIVISION'S DETERMINATION

42. WHEREAS, based on the foregoing, the Division has determined that Brennan and Sams have engaged, are engaging, or are about to engage in an act, practice, or course of

business constituting a violation of the Act or a rule adopted or order issued under the Act as follows:

- a. Brennan and Sams did not apply for registration as IARs in South Carolina for 2006 pursuant to S.C. Code Ann. § 35-1-406(a);
- b. The IAR registration fee of \$55 for Brennan and \$55 for Sams for 2006 was not paid to the State of South Carolina;
- c. Brennan and Sams did not apply for registration as IARs in South Carolina for 2007 pursuant to S.C. Code Ann. § 35-1-406(a) until on or about February 22, 2007;
- d. Brennan and Sams have not been registered in South Carolina as IARs since December 31, 2005;
- e. Brennan and Sams are not exempt from registration as IARs in South Carolina under S.C. Code Ann. § 35-1-404(b); and
- f. Brennan and Sams have violated S.C. Code Ann. §§ 35-1-404(a) by placing orders to trade securities in client accounts in 2006 and 2007 while not being registered as IARs, by managing securities accounts or portfolios of clients in 2006 and 2007 while not being registered as IARs, by soliciting the business of prospective clients in 2006 and 2007 while not being registered as IARs, or by holding themselves out as providing investment advice in 2006 and 2007 while not being registered as IARs.

43. WHEREAS, based on the foregoing, the Division has determined that LOCG has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act as follows:

- a. LOCG has not been registered in South Carolina as an IA since December 31, 2006;

- b. On April 23, 2007, LOCG filed a complete 2007 application for registration as an IA in South Carolina. Since then, the Division has been reviewing LOCG's 2007 application pursuant to S.C. Ann. § 35-1-406(c) of the Act;
- c. LOCG is not exempt from registration in South Carolina under S.C. Code Ann. § 35-1-403(b) of the Act;
- d. In 2006 and 2007, LOCG, as an IA, has employed or associated with Brennan and Sams, who were required to register as IARs under the Act, to transact business in South Carolina on behalf of LOCG;
- e. In 2006, LOCG compensated or made distributions to Brennan and Sams;
- f. In 2006 and 2007, Brennan and Sams transacted business in South Carolina on behalf of LOCG;
- g. LOCG advertised a presentation concerning securities to prospective clients and used the term "Registered Investment Advisor" in the advertisement. This presentation was scheduled to be held on February 15, 2007. LOCG held such a program in February 2007;
- h. LOCG opened two (2) new securities accounts for customers during the first quarter of 2007;
- i. LOCG made trades of securities in customer accounts in 2007 while not being registered as an IA in South Carolina;
- j. LOCG has violated S.C. Code Ann. § 35-1-403(d) since January 1, 2006, by employing or associating with Brennan and Sams who have transacted business in South Carolina as IARs on behalf of LOCG without being registered as IARs or exempt from registration; and
- k. LOCG has violated S.C. Code Ann. § 35-1-403(a) by, for compensation, soliciting new investment advisory clients while not being registered as an IA in

South Carolina, opening new securities accounts in 2007 while not being registered as an IA in South Carolina, and making trades of securities in customer accounts in 2007 while not being registered as an IA in South Carolina.

44. The Division seeks a civil penalty of \$1,000 each from Brennan and Sams, a civil penalty of \$2,000 from LOCG, and \$1,000 from LOCG as reimbursement for the costs of this investigation if this Order becomes effective by operation of law, or, if a Respondent(s) seeks a hearing and a hearing officer or any other legal authority resolves this matter, an amount not to exceed \$10,000 for each violation of the Act by the Respondent(s) and the actual cost of the investigation.

ORDER CEASE AND DESIST

45. NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act, IT IS HEREBY **ORDERED** that Brennan and Sams:

- a. Cease and desist from transacting business, in violation of S.C. Code Ann. § 35-1-404(a), in South Carolina as an IAR while not registered; and
- b. Pay \$1,000 each (i.e., \$2,000 in total) if this Order becomes effective by operation of law, or, if Brennan or Sams seeks a hearing and a hearing officer or any other legal authority resolves this matter, an amount not to exceed \$10,000 for each violation of the Act by Brennan or Sams and the actual cost of the investigation.

46. NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act, IT IS HEREBY **ORDERED** that LOCG:

- a. Cease and desist from employing or associating with, in violation of S.C. Code Ann. §35-1-403(d), individuals required to be registered under the Act as IARs who transact business in South Carolina on behalf of LOCG unless the individual is registered under the Act or exempt from registration under the Act;

- b. Cease and desist from transacting business, in violation of S.C. Code Ann. § 35-1-403(a), in South Carolina as an IA while not registered; and
- c. Pay a civil penalty of \$2,000 and a reimbursement of certain costs of the investigation of \$1,000 if this Order becomes effective by operation of law, or, if LOCG seeks a hearing and a hearing officer or any other legal authority resolves this matter, an amount not to exceed \$10,000 for each violation of the Act by LOCG and the actual cost of the investigation.

**REQUIREMENT OF ANSWER AND
NOTICE OF OPPORTUNITY FOR HEARING**

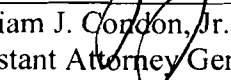
- 47. Respondents are hereby notified that they have the right to a hearing on the matters contained herein. To schedule such a hearing, a Respondent must file with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Thresechia Navarro, within thirty (30) days after the date of service of this Order to Cease and Desist a written Answer specifically requesting a hearing therein.
- 48. In the written Answer, Respondent(s), in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent(s) relies. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.
- 49. Failure by a Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by that Respondent of the right to such a hearing. Failure of a Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated civil penalty, becoming final as to the Respondent by operation of law.

50. CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE FINES. WILLFUL VIOLATION OF THIS ORDER COULD RESULT IN CRIMINAL PENALTIES UNDER S.C. CODE ANN. § 35-1-508 OF THE ACT.

IT IS SO ORDERED.

Executed and entered, this the 5th day of June, 2007.

By: _____


William J. Condon, Jr.
Assistant Attorney General
Securities Division
Rembert C. Dennis Building
1000 Assembly Street
Columbia, S. C. 29201
(803) 734-4731